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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,697	06/16/2000	Robert Lee Fitzsimmons JR.	VULC-004/00US	2303
22903	7590	01/13/2006		
COOLEY GODWARD LLP ATTN: PATENT GROUP 11951 FREEDOM DRIVE, SUITE 1700 ONE FREEDOM SQUARE- RESTON TOWN CENTER RESTON, VA 20190-5061			EXAMINER LE, KHANH H	
			ART UNIT 3622	PAPER NUMBER

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/594,697

Applicant(s)

FITZSIMMONS, ROBERT LEE

Examiner

Khanh H. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/1/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/1/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **Detailed Action**

1. This Office Action is in response to the Amendment and Response, received August 1, 2005. Claims 1, 3-14 are presented for examination. Claims 1 and 9 are independent.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 1, and 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasawara, US 6123259.**

As to claims 1 and 9 , OGASAWARA discloses:

A method , system and applications to supplement an experience of a visitor to a public space, the public space including a plurality of artifacts (i.e. man-made objects: store items, see abstract ) comprising:

recording in a memory of a portable electronic selection device (see Figs. 2-3 and associated text: recording on the user IC card)

, an identifier associated with one of the artifacts (see at least col. 1 lines 23-24 ; col.2 lines 28-40; col.5 lines 1-8 : SKU or UPC codes ) wherein the recording occurs in response to a visitor selection while the visitor is positioned within the public space that contains the artifact (see at least col. 1 lines 23-24 ; col.2 lines 28-40);

As to the limitations “responsive to the recorded identifier, providing access for the visitor, when positioned outside the public space, via a communications network, to additional information relating to the artifact associated with the recorded identifier”, OGASAWARA discloses the user purchases and identifiers are recorded on his IC card. When he gets home, he can connect his IC card to his home computer for the system to recommend a replenishment list based on the purchase history which is made up of purchases items and their identifiers (Figs. 5A

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and 5B and associated text; col. 13 lines 46-56; col. 15 lines 55-56). Such recommendations are interpreted as additional information provided to the user relating to the artifacts associated with the recorded identifiers. OGASAWARA does not, however, specifically disclose which communication network is used so that the system can achieve such recommendations.

However OGASAWARA discloses the replenishment list is to assist the shopper while he compiles his shopping list at home ahead of a shopping trip (col. 11 lines 40-52; col. 1 lines 50-55). Further, OGASAWARA discloses the customer shopping list is prepared from his home computer and can be uploaded to the store's website via Internet to be used when the shopper is in-store (col. 3 lines 1-5). OGASAWARA also discloses 2 alternative ways for the IC card to receive the recommended list, either by connecting the IC card to the home computer or by connecting the IC card to the mobile personal shopping terminal (col. 13 lines 53-57). When the recommendations come to the user via the mobile personal shopping terminal, this latter gets the recommendations from downloads from the store server, (col. 15 lines 63-67). Thus it would have been obvious to one skilled in the art at the time of the invention, to add to OGASAWARA, recommendations processed and downloaded from the store server to the user home PC as well, to allow the user to compile his final shopping list, in the convenience of his home, ahead of shopping since that is the goal of OGASAWARA and further because the store server would have the latest data on promotional items to recommend. Since the internet is disclosed in OGASAWARA as a communications network between the home P.C. and the store server for uploading the shopping list once compiled, it would have been obvious to add to OGASAWARA using the internet as a communication network, as well, since the network is readily available, to provide the user with the reverse flow of information, the replenishment and promotional items list, as additional information based on the purchased artifacts identifiers, as claimed.

As to claims 3 and 10, OGASAWARA discloses downloading and storing recorded identifiers from the portable device to a user profile database when the visitor is no longer positioned within the public space (col. 6 lines 15-22; col. 3 lines 40-50).

As to claims 4 and 11, OGASAWARA does not specifically disclose

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wherein the step of providing access to additional information includes the step of making the recorded identifier available via a World Wide Web site tailored to further research relating to the artifact associated with the recorded identifier.

However as discussed in claim 1, it would have been obvious to add to OGASAWARA processing the recommended list on a store server connected to the user home PC for the convenience of the user and because the most recent data would have been available from the store server. The internet would have been obvious to provide the reverse flow of information as discussed in claim 1. A dedicated store World Wide Web site tailored to such list recommendation application (further research relating to the artifact associated with the recorded identifier) would have further been obvious to be added to OGASAWARA as such tailored websites are standard and well-known ways of processing internet-based applications.

As to claims 5 and 12, OGASAWARA discloses wherein the step of providing access to additional information further includes the step of making the recorded identifier available via a workstation in the public space (col. 13 lines 53-57 : the mobile shopper terminal), the workstation being tailored to identify public space content and/or provide further content relating to the artifact associated with the recorded identifier (col. 13 lines 53-57; col. 15 lines 63-67).

As to claims 6. and 13, OGASAWARA discloses providing access to additional information further includes the step of making the recorded identifier available to a public space point-of-sale server, the point-of-sale server being tailored to personalize the visitor's subsequent visits to the public space based on the recorded identifier (col. 16 lines 36-47).

As to claims 7, OGASAWARA discloses providing access to additional information further includes the step of making the recorded identifier available to a public space point-of-sale server, the point-of-sale server being tailored to keep the visitor apprised of events relating to the artifact associated with the recorded identifier (col. 13 lines 53-57; col. 15 lines 63-67: promotional items/events).

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As to claims 8 and 14, OGASAWARA discloses the public space is a retail store (abstract) .

### **Response to Arguments**

4. Applicants remarks have been unpersuasive. Contrary to arguments, nothing in the claims require the user to leave the public space without a list. Further, OGASAWARA specifically suggests a reverse flow of information to the user based on items selected and purchased at the store, i.e. a recommended list, when the user is at his home PC ( col.13 lines 53-55). The internet as a communication network to provide such reverse flow of information is obvious as discussed in claims 1 and 9 above.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### **Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

King et al, US 6169498 B1, discloses device and method for communication location (e.g. museums) specific messages.

Greene et al., US 6879835 B2 discloses location specific messaging system.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The

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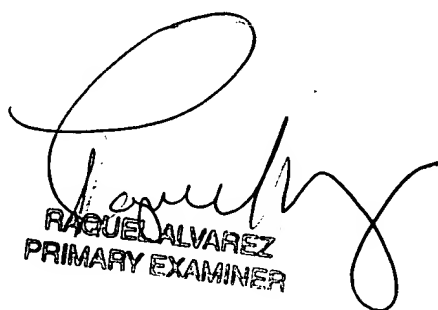
Examiner works a part-time schedule and can normally be reached on Tuesday-Wednesday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 6, 2006

KHL



RAQUEL ALVAREZ  
PRIMARY EXAMINER